

RESOLUTION NO. 96-237

**A RESOLUTION ESTABLISHING A POLICY FOR DRUG AND ALCOHOL-FREE
WORKPLACE FOR EMPLOYEES WITH COMMERCIAL DRIVER'S LICENSES**

The City Council of the City of Delta, Utah, referred to herein as the "City Council", hereby recites the following as the basis for adopting this resolution:

RECITALS

A. The City of Delta ("Delta City") has a public trust to provide a variety of services to the community. An efficient and productive work force is vital to carry out that trust. The public has a reasonable right to expect persons employed by Delta City to perform their duties free from the effects of drugs and alcohol.

B. Delta City has an obligation to ensure public safety through the actions of its employees. Furthermore, employees of Delta City have a reasonable right to work in a safe environment free from the effects of drug and alcohol use. Delta City has a reasonable right to expect employees to report for work fit for duty and free from the effects of drug and alcohol use.

C. Delta City recognizes that an employee's physical condition affects job performance, and that drug abuse ranks as one of the major health problems in our society. It is the intent of this policy to express Delta City's viewpoint on drug and alcohol usage and to provide guidelines for consistent handling of situations arising from such usage.

D. No part of this policy, nor any of the related procedures, is intended to affect the City's right to manage its work place and discipline its employees, or to guarantee employment, continued employment, or terms or conditions of employment. In addition, Delta City desires to promote compliance by all City employee's with the laws regarding the illegal use of drugs and alcohol.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

Section 1. Drug and Alcohol-Free Workplace Policy for Delta City Employees With Commercial Driver's Licenses - Adopted. The document attached hereto entitled "A Drug and Alcohol-Free Workplace Policy for Delta City Employees With Commercial Driver's Licenses" is hereby adopted by the City Council.

Section 2. Administration. The Mayor, as the Delta City Chief Executive Officer, is ordered to implement this policy in accordance with federal and state laws and appropriate Delta City procedures.


Section 3. Effective Date. This resolution shall become effective upon adoption.

Section 4. Notice. A copy of the attached policy statement shall be provided to each Delta City employee. The City Recorder is directed to file a signed copy from each Delta City employee to be placed in his/her personnel file.

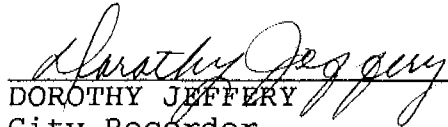
Section 5. Severability. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

Section 6. Repeal of Conflicting Resolutions. To the extent that any ordinances, resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND APPROVED this 8th day of January, 1996.


DON DAFOE, Mayor

Attest:


DOROTHY JEFFERY
City Recorder

**DRUG AND ALCOHOL-FREE WORKPLACE POLICY
FOR EMPLOYEES WITH COMMERCIAL DRIVER'S LICENSES**

I. POLICY

Delta City is committed to providing a workplace environment which ensures the safety and encourages the personal health and productivity of its employees. Delta City recognizes that substance abuse in the workplace is a threat to the safety, health and job performance of its employees. The goal of this policy is to balance Delta City's respect for individuals, with the need to maintain a safe, productive drug and alcohol-free workplace and to conform to Department of Transportation (DOT) requirements for employees who hold Commercial Driver's Licenses (CDL's).

The purpose of this policy is to convey to Delta City employees who possess CDL's the policy on alcohol and drug use in the workplace. These policies and procedures are not intended to create a contract between Delta City and its employees.

II. SCOPE

All Delta City employees who possess a CDL and who meet the following criteria are covered by this policy. Drivers who operate vehicles where:

- a. The gross vehicle weight rating is over 26,000 pounds, or
- b. The vehicle holds sixteen (16) passengers, or more, including the driver; or
- c. The vehicle holds hazardous materials requiring placards

As a condition of employment, employees are required to abide by this policy.

It is, therefore, the policy of Delta City that the following activities are strictly prohibited during working and on duty hours as defined in Section III(i) "**Definitions**".

III. DEFINITIONS

a. "**Controlled Substance**" - any substance including those assigned by 21 U.S.C. 802 and includes all substances listed on Schedule 1. through Schedule V., as they may be revised from time to time (21 CFR 1308).

b. "**Drug Testing**" or "**Drug Test**" - scientific analysis for the presence of drugs or their metabolites in the human body.

c. "**Employee**" - individual or officer in the service of the employer for compensation.

d. **"Prospective Employee"** - any individual who has made a written or oral application to become an employee of Delta City.

e. **"Reasonable Suspicion"** or **"For Cause Testing"** - an articulated belief, based on recorded specific facts and reasonable inference drawn from those facts, that an employee is in violation of this policy.

f. **"Random Testing"** - unannounced drug testing of an employee who was selected by using a method uninfluenced by any personal characteristic other than job category.

g. **"Sample"** - any sample of urine, blood, breath, saliva or hair used for drug and/or alcohol testing.

h. **"Safety Sensitive Positions"** - all employees who possess Commercial Driver's Licenses (CDL's) and who operate a vehicle with the following characteristics:

A gross vehicle weight rating over 26,000 pounds

The vehicle contains sixteen (16) passengers, or more, including the driver; or

The vehicle contains hazardous materials requiring placards

i. **"On Duty"** - any employee waiting to be dispatched, inspecting equipment, driving in a vehicle, loading or unloading a vehicle, on a vehicle, or attending a disabled vehicle.

j. **"Medical Review Officer"** ("MRO") - a licensed physician with a knowledge of drug abuse disorders that is employed or contracted by Delta City to conduct review of drug-test results.

k. **"Alcohol Testing"** - testing conducted by a Department of Transportation (DOT) certified breath-alcohol technician using a DOT approved breath testing device.

IV. GENERAL POLICY GUIDELINES

It is the policy of Delta City to maintain all test results in a separate, secure, locked file cabinet (not with other personnel records) with limited access to the records. Confidential records will not be shared with other employee personnel or supervisors that do not have security clearance.

Results are reported only to a City representative that has been authorized to receive test results. The representative is identified by code and listed as the point of contact for all test-related matters.

Any employee with a positive test result for alcohol (0.04 or greater) or a positive drug test result will be referred to a qualified Substance Abuse Professional and will not be allowed to resume duties of a safety sensitive position until they are evaluated.

It will be Delta City policy to follow the requirements for background checks for drivers with past substance abuse violations (per FHWA requirements). New hire employees are required to complete the form (**Alcohol and Drug Test Release Form**) to allow the review of previous test results.

It is Delta City policy to have supervisors complete the **Observed Behavior/Reasonable Suspicion Form** prior to any request for a reasonable suspicion test.

V. PROHIBITED ACTIVITIES FOR CONTROLLED SUBSTANCE OR ALCOHOL ABUSE

It is against Delta City policy for an employee possessing a CDL to report to work with the presence of a Controlled Substance or Alcohol in his/her body. Any employee violating this policy shall not be allowed to work and shall be subject to disciplinary action.

It is against Delta City policy for an employee to sell, distribute, use, purchase, manufacture or be in possession of a Controlled Substance or Alcohol while on City time, on City business or on City property. This policy is in effect for all CDL drivers when they are "on duty" as defined in Section III. **Definitions.**

It is against Delta City policy for an employee to operate any vehicle or machinery while under the influence of any drug or alcohol which renders the employee incapable of safely and adequately operating the vehicle or equipment. Presence of a listed prohibited drug in the body of an employee will constitute a violation of this policy.

It is against Delta City policy for an employee to refuse to submit a specimen. Refusal to submit a specimen will prohibit an employee from performing a safety sensitive function and will be treated as a positive test for purposes of determining if the driver can operate a commercial motor vehicle.

The use of a Controlled Substance is prohibited except when the use is pursuant to the instructions of a physician, where the physician has advised the driver that the substance will not affect the driver's ability to safely operate commercial vehicles.

Any employee that tampers with or adulterates a drug or alcohol specimen will be in violation of City policy.

Violations of Delta City policy will be subject to disciplinary action, up to and including termination.

It will be the policy of Delta City to make any driver that is subject to a post-accident test readily available for such testing.

VI. DRUG AND ALCOHOL TESTING CIRCUMSTANCES

Pre-employment Procedures: All prospective employees who are required to possess a CDL will be asked to submit to a drug test at Delta City designated facility as part of a potential job offer. Final employment with Delta City can be offered to those who successfully pass the pre-employment drug test. Refusal to consent to a drug test will stop any further action toward employment.

Post-Accident Tests: Delta City will require drug and alcohol testing of any employee involved in an on-the-job accident where the following occurs: a fatality or a moving citation under state or local law for a violation that arises from the accident. Post-accident testing will be carried out pursuant to DOT rules and regulations for drug and alcohol tests after an accident.

Reasonable Suspicion: (For Cause Test) Reasonable Suspicion testing will be done in cases where there is a belief by a supervisor/manager that an employee may be using an illegal drug or alcohol. Reasonable Suspicion or For-Cause Tests will be required when there is:

1. Observable phenomena (actual use or possession)
2. Abnormal behavior
3. A drug-related investigation, arrest or conviction

Random Testing: Random testing will be administrated by a third-party administrator, consortium, collection agency or Delta City. Random testing will be conducted for those employees who possess a CDL as specified by rules and regulations promulgated by the Omnibus Transportation Employee Testing Act of 1991. Drivers will not be given any notification of their selection for a random drug or alcohol test.

Return-to-Duty: Any employee who returns to work under the terms of a return-to-work agreement will be subject to at least six (6) unannounced tests in the first 12 months after they return to work. Follow-up testing may be extended for up to 60 months following the return-to-duty.

Prohibited Drugs: Delta City will specifically test for the following drugs as part of Delta City's drug-free workplace policy and to comply with Federal Highway Association (FHWA) rules and regulations:

1. Marijuana
2. Cocaine
3. Amphetamines
4. Phencyclidine (PCP)
5. Opiates
6. Alcohol

VII. SPECIFIC PROHIBITIONS ON ALCOHOL USE

It is against City policy for drivers to consume alcohol within four (4) hours of reporting for work.

It is against City policy for a driver to consume alcohol within eight (8) hours after an accident that results in:

- a. A fatality
- b. A moving violation citation to the driver for a violation arising from an accident

It will be Delta City policy to test any driver who violates the above circumstances for alcohol within 2 hours of the accident. It will be City policy not to test any driver for alcohol beyond 8 hours after the accident occurs.

It will be Delta City policy not to allow any driver that has a Breath Alcohol Content (BAC) of .04 percent to operate any vehicle. Any driver that has a BAC of .04 percent or higher will be referred to a Substance Abuse Professional (SAP) for an evaluation. Drivers will not be allowed to return to work until they are evaluated by a SAP.

It is against Delta City policy for any employee to report to work with a BAC of .02-.39 percent. A driver with a BAC within this range will not be allowed to work for 24 hours after the positive test.

It will be against Delta City policy for drivers to possess any unmanifested isopropyl, methyl or ethyl alcohol.

GENERALLY

It will be Delta City policy to test drivers immediately before, during or immediately after the performance of a safety sensitive function.

It will be against Delta City policy for any supervisor/manager that has actual knowledge of a driver using a controlled substance or alcohol to permit the driver to perform or continue to perform safety sensitive functions.

VIII. ADA COMPLIANCE

Alcoholism is considered a disability under the American's with Disability Act (the "ADA"). Delta City will make reasonable accommodations under the ADA for employees who suffer from alcoholism, including encouraging an employee to participate in rehabilitation programs. However, Delta City will hold an alcoholic employee to the same performance standards as other employees and will discipline an employee, up to and including termination, if the employee's alcohol use adversely affects the employee's job performance.

The Equal Opportunity Employment Commission states in its guidelines, coverage as stated under the ADA:

A person who is an alcoholic is an individual with a disability under the ADA.

An employer may discipline, discharge or deny employment to an alcoholic employee whose use of alcohol impairs job performance or conduct to the extent that the employee is no longer a "qualified individual with a disability".

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Although individuals with alcoholism are protected by the ADA, they can be held to the same standards as other employees. Therefore, behavior cannot be condoned just because it may be alcohol-related.

IV. IMPLEMENTATION

This policy is intended to be a unilateral expression of the general policies and guidelines concerning drug or alcohol abuse and Delta City's personnel program. It is not intended to create any contractual rights of employment, whether express or implied, between Delta City and its employees. Delta City reserves the right to change the provisions of the personnel program and this policy at any time.